



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : HAYS, Bill J.
SERIAL NO.: 10/820,206
FILED : April 10, 2004
FOR : CAN OPENING TOOL
ART UNIT : 3723
EXAMINER : Bryan R. Miller

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Honorable Commissioner Of Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Dear Sir:

In the matter of the above-identified application, please enter the following response to the Office action of August 23, 2005.

Kindly enter kindly enter the election of species beginning on page 2 of this response and reconsider the election requirement in view of the remarks which begin on page 2 of this response.

CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the U.S. Postal Service on October 6, 2005 in an envelope addressed to
MAIL STOP AMENDMENT
COMMISSIONER FOR PATENTS
P.O. Box 1450, Alexandria, VA 22313-1450



Robert E. Strauss

ELECTION OF SPECIES:

In response to the Office requirement for election of species, Applicant has elected to prosecute the claims which are readable on the Species 1, represented by Figures 1-4.

DESCRIPTION OF ELECTED AND NON=ELECTED CLAIMS::**ELECTED CLAIMS:**

The claims which are included in this election are:

Claim 1, which is generic to all species;

Claims 2-6, which are dependent claims represented by Figures 1-4.
and

Claims 11 and 12 which are method claims directed to Figures 1-4.

NON-ELECTED CLAIMS:

The claims which are not elected are:

Claims 7 and 8 which are directed to Species 2 which is represented by Figures 5 and 6; and

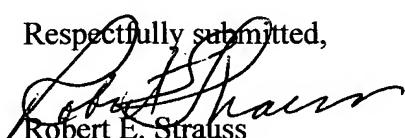
Claim 9 and 10 which are directed to Species 3, which is represented by Figure 7.

APPLICANT'S REMARKS AND ARGUMENTS:

It is respectfully submitted that the requirement for an election of species is not proper. Claims 7 and 8 are not a patentably distinct species from claims 1-6. Instead, claims 7 and 8 are directed to a combination of the tool recited by claims 1-6 with a power driver. There is no element of the tool which is recited in claims 1-6 which is replaced with an alternative element and therefore, claims 7 and 8 are not species to claims 1-6. Instead, claims 1-6 are a subcombination of the combination recited in claims 7 and 8.

Reconsideration of the requirement is requested and examination of all claims of this application is solicited.

Respectfully submitted,



Robert E. Strauss